

## Small Business Administration

## § 120.413

### § 120.395 What is SBA's collateral position?

SBA will require a lien on the building which must be in no less than a second position.

### § 120.396 What is the term of the loan?

The loan must not exceed sixty (60) months plus the estimated time to complete construction or rehabilitation.

### § 120.397 Are there any special restrictions?

The borrower must not use loan proceeds to purchase vacant land for possible future construction or to operate or hold rental property for future rehabilitation. SBA may allow rental of the property only if the rental will improve the ability to sell the property. The sale must be a legitimate change of ownership.

## Subpart D—Lenders

### § 120.400 Loan Guarantee Agreements.

SBA may enter into a Loan Guarantee Agreement with a Lender to make deferred participation (guaranteed) loans. Such an agreement does not obligate SBA to participate in any specific proposed loan that a Lender may submit. The existence of a Loan Guarantee Agreement does not limit SBA's rights to deny a specific loan or establish general policies. *See also* §§ 120.441(b) and 120.451(d) concerning Supplemental Guarantee Agreements.

#### PARTICIPATION CRITERIA

### § 120.410 Requirements for all participating Lenders.

A Lender must:

(a) Have a continuing ability to evaluate, process, close, disburse, service and liquidate small business loans;

(b) Be open to the public for the making of such loans (not be a financing subsidiary, engaged primarily in financing the operations of an affiliate);

(c) Have continuing good character and reputation, and otherwise meet and maintain the ethical requirements of § 120.140

(d) Be supervised and examined by a State or Federal regulatory authority, satisfactory to SBA; and

(e) In order to make Low Documentation loans, be:

(1) A bank or thrift institution which has executed an SBA Form 750, Loan Guaranty Agreement, and which has at least 20 qualified loans outstanding as of the call report date closest to the date of its fiscal year end, or

(2) An institution other than a bank or thrift institution which has executed an SBA Form 750, Loan Guaranty Agreement, and which has at least 20 qualified loans outstanding as of its latest fiscal year end. For purposes of this paragraph (e), a qualified loan is one which was initially approved in the amount of \$100,000 or less and is classified as a commercial, industrial or commercial real estate loan for purposes of call reporting. A lender may request an exception to the requirements of this paragraph (e) from the SBA Associate Administrator for Financial Assistance.

[61 FR 3235, Jan. 31, 1996, as amended at 62 FR 302, Jan. 3, 1997]

### § 120.411 Preferences.

An agreement to participate under the Act may not establish any Preferences in favor of the Lender.

### § 120.412 Other services Lenders may provide Borrowers.

Subject to § 120.140 Lenders, their Associates or the designees of either may provide services to and contract for goods with a Borrower only after full disbursement of the loan to the small business or to an account not controlled by the Lender, its Associate, or the designee. A Lender, an Associate, or a designee providing such services must do so under a written contract with the small business, based on time and hourly charges, and must maintain time and billing records for examination by SBA. Fees cannot exceed those charged by established professional consultants providing similar services. *See also* § 120.195.

### § 120.413 Advertisement of relationship with SBA.

A Lender may refer in its advertising to its participation with SBA. The advertising may not:

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- (a) State or imply that the Lender, or any of its Borrowers, has or will receive preferential treatment from SBA;
- (b) Be false or misleading; or
- (c) Make use of SBA's seal.

### MISCELLANEOUS PROVISIONS

#### § 120.414 SBA access to Lender files.

A Lender must allow SBA's authorized representatives, during normal business hours, access to its files to review, inspect and copy all records and documents relating to SBA guaranteed loans.

[61 FR 3235, Jan. 31, 1996. Redesignated at 64 FR 6509, Feb. 10, 1999]

#### § 120.415 Suspension or revocation of eligibility to participate.

SBA may suspend or revoke the eligibility of a Lender to participate in the 7(a) program because of a violation of SBA regulations, a breach of any agreement with SBA, a change of circumstance resulting in the Lender's inability to meet operational requirements, or a failure to engage in prudent lending practices. Proceedings for such purposes will be conducted in accordance with the provisions of part 134 of this chapter. A suspension or revocation will not invalidate a guarantee previously provided by SBA.

[61 FR 3235, Jan. 31, 1996. Redesignated at 64 FR 6509, Feb. 10, 1999]

### PARTICIPATING LENDER FINANCINGS

SOURCE: Sections 120.420 through 120.428 appear at 64 FR 6507-6509, Feb. 10, 1999, unless otherwise noted.

#### § 120.420 Definitions.

(a) *7(a) Loans*—All references to 7(a) loans under this subpart include loans made under section 7(a) of the Small Business Act (15 U.S.C. 631 *et seq.*) and loans made under section 502 of the Small Business Investment Act (15 U.S.C. 661 *et seq.*), both of which may be securitized under this subpart.

(b) *Bank Regulatory Agencies*—The bank regulatory agencies are the Federal Deposit Insurance Corporation, the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision.

(c) *Benchmark Number*—The maximum number of percentage points that a securitizer's Currency Rate can decrease without triggering the PLP suspension provision set forth in § 120.425. SBA will publish the Benchmark Number in the FEDERAL REGISTER.

(d) *Currency Rate*—A securitizer's "Currency Rate" is the dollar balance of its 7(a) guaranteed loans that are less than 30 days past due divided by the dollar balance of its portfolio of 7(a) guaranteed loans outstanding, as calculated quarterly by SBA, excluding loans approved in SBA's current fiscal year.

(e) *Currency Rate Percentage*—The relationship between the securitizer's Currency Rate and the SBA 7(a) loan portfolio Currency Rate as calculated by dividing the securitizer's Currency Rate by the SBA 7(a) loan portfolio Currency Rate.

(f) *Good Standing*—A Lender is in "good standing" with SBA if it:

(1) Is in compliance with all applicable:

- (i) Laws and regulations;
- (ii) Policies; and
- (iii) Procedures;

(2) Is in good financial condition as determined by SBA;

(3) Is not under investigation or indictment for, or has not been convicted of, or had a judgment entered against it for a felony or fraud, or charges relating to a breach of trust or violation of a law or regulation protecting the integrity of business transactions or relationships; and

(4) Does not have any officer or employee who has been under investigation or indictment for, or has been convicted of, or had a judgment entered against him for a felony or fraud, or charges relating to a breach of trust or violation of a law or regulation protecting the integrity of business transactions or relationships unless, the Securitization Committee has determined that good standing exists despite the existence of such person.

(g) *Initial Currency Rate*—The Initial Currency Rate (ICR) is the securitizer's benchmark Currency Rate. SBA will calculate the securitizer's ICR as of the end of the calendar quarter immediately prior to the first securitization